

**RULES  
OF  
TENNESSEE DEPARTMENT OF MENTAL HEALTH  
AND MENTAL RETARDATION  
MENTAL HEALTH SERVICES DIVISION**

**CHAPTER 0940—3—3  
FORENSICS**

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**0940—3—3—.01 TRANSFER FROM INSTITUTE TO FORENSIC SERVICES UNIT.** A physician licensed in Tennessee or licensed psychologist with health service provider designation must perform the mental health evaluation of a person who is to be transferred and must submit a written report justifying the transfer.

*Authority:* T.C.A. §§ 4—4—103, 33—1—203 through 33—1—205 and Chapter 7, Title 33. *Administrative History:* Original rule filed October 17, 1978; effective December 1, 1978. Amendment filed November 22, 1991; effective January 6, 1992. Amendment filed September 25, 1995; effective December 9, 1995.

**0940—3—3—.02 TRANSFER FROM INSTITUTE TO FORENSIC SERVICES UNIT: TRANSFER NOTICE RECEIPT.** The notice of transfer to the patient shall contain an attached receipt. The transfer candidate shall sign the receipt at the time the notice and petition form are delivered to him. If the transfer candidate refuses to sign the receipt, the person who delivers the notice of transfer and petition form in the presence of two witnesses, shall write on the receipt the words “Refused to sign receipt.” The receipt shall be filed in the office of the superintendent of the hospital.

*Authority:* T.C.A. §§ 33—1—203, 33—1—204, and 33—1—205. *Administrative History:* Original rule filed October 17, 1978; effective December 1, 1978.

**0940—3—3—.03 TRANSFER FROM DEPARTMENT OF CORRECTION: NOTICE.**

- (1) The director of an institution of the Department of Correction, or his designee, shall personally deliver written notice of the director’s decision to transfer the person not less than twenty-four (24) hours in advance of the proposed transfer, to allow the transfer candidate a sufficient opportunity to object to the proposed transfer. The notice of transfer shall contain an attached receipt. The transfer candidate shall sign the receipt at the time the notice is delivered to him. If the transfer candidate refuses to sign the receipt the director shall write on the receipt the words “refused to sign receipt.” The receipt shall be filed in the office of the director of the transferring institution of the Department of Correction.
- (2) When a transfer committee has approved a transfer over the person’s objection, the chairman of the transfer committee shall provide the person with a written notice of transfer with receipt and a petition form for judicial review. If the transfer candidate refused to sign the receipt, the chairman, in the presence of two witnesses, shall write on the receipt the words “refused to sign receipt.” The receipt shall be filed in the office of the director of the transferring institution of the Department of Correction.

*Authority:* T.C.A. §§ 33—1—203, 33—1—204, and 33—1—205. *Administrative History:* Original rule filed October 17, 1978; effective December 1, 1978. Repealed by Public Chapter 969; effective July 1, 1984.

**0940—3—3—.04 TRANSFER FROM DEPARTMENT OF CORRECTION: TRANSFER COMMITTEE. Repealed.**

*Authority:* T.C.A. §§ 33—1—203, 33—1—204, and 33—1—205. *Administrative History:* Original rule filed October 17, 1978; effective December 1, 1978. Repealed by Public Chapter 969; effective July 1, 1984.

**0940—3—3—.05 TRANSFER FROM DEPARTMENT OF CORRECTION: TRANSFER NOTICE RECEIPT. Repealed.**

*Authority:* T.C.A. §§ 33—1—203, 33—1—204, and 33—1—205. *Administrative History:* Original rule filed October 17, 1978; effective December 1, 1978. Repealed by Public Chapter 969; effective July 1, 1984.

**0940—3—3—.06 TRANSFER FROM DEPARTMENT OF CORRECTION: EMERGENCY TRANSFER NOTICE RECEIPT.** The notice of transfer shall contain an attached receipt. The transferee shall sign the receipt when the director of the Forensic Services Unit, or his designated representative, gives him the notice of transfer and petition form. If the transferee refuses to sign the receipt, the director or his designated representative, in the presence of two witnesses, shall write on the receipt the words "Refused to sign receipt." The receipt shall be filed in the office of the director of the Forensic Services Unit and a copy of the receipt shall be filed in the office of the director of the transferring institution of the Department of Correction.

*Authority:* T.C.A. §§ 33—1—203, 33—1—204, and 33—1—205. *Administrative History:* Original rule filed October 17, 1978; effective December 1, 1978.

**0940—3—3—.07 EVALUATION OF COMPETENCE TO STAND TRIAL.**

- (1) Mental health evaluation to determine competence to stand trial by employees or contracting agencies of the Department of Mental Health and Mental Retardation shall be performed only by persons certified as having satisfactorily participated in an education program sponsored by the department.
- (2) Employees or employees of contracting agencies who may be certified by the Department of Mental Health and Mental Retardation to perform mental health evaluations to determine competence to stand trial include persons who meet the following qualifications, and who in the discretion of the department are certified to perform such evaluations:
  - (a) A physician licensed in the State of Tennessee with expertise in psychiatry as determined by training, education, or experience.
  - (b) A licensed psychologist with health service provider designation.
  - (c) A licensed psychological examiner licensed in Tennessee.
  - (d) A social worker who has earned a master's degree in social work.
  - (e) A nurse clinical specialist who has earned a master's degree in psychiatric nursing and who is licensed to practice nursing in Tennessee.
  - (f) A professional counselor who has earned a master's degree in counseling.
  - (g) A person who has received a master's degree or its equivalent, in a human service or behavioral science related field, and who has completed at least one year of practical forensic experience under the supervision of a certified forensic evaluator.
- (3) Mental Health Evaluation of Person Charged with Commission of Capital Offense. When the department or a contracting agency evaluates a person charged with the commission of a capital offense, a licensed physician with expertise in psychiatry as determined by training, education, or experience must participate.

(Rule 0940-3-3-.07, continued)

- (4) Further Evaluation for Persons Thought to be Incompetent to Stand Trial. If the department or contracting agency recommends inpatient evaluation *under T.C.A. § 33—7—301* (a), its notice of recommendation to the court must be signed by a physician or psychologist who is certified and qualified under paragraphs (1) and (2)(a) or (b) of this rule and who participated in the outpatient evaluation of the defendant.

**Authority:** T.C.A. §§ 4—4—103, 33—1—203 through 33—1—205 and Chapter 7, Title 33. **Administrative History:** Original rule filed October 17, 1978; effective December 1, 1978. Amendment by Public Chapter 969; effective July 1, 1984. Amendment filed July 11, 1984; effective August 10, 1984. Amendment filed November 22, 1991; effective January 6, 1992. Amendment filed September 25, 1995; effective December 9, 1995.

#### **0940—3—3—.08 PROCEDURE FOR TRANSFER FROM FORENSIC SERVICES UNIT.**

- (1) Before a transfer from a forensic services unit is authorized, the patient must be given a thorough physical and mental examination by a licensed physician. The superintendent who recommends the transfer shall notify the patient, family and committing court of the transfer request and send written reports of the examination to the Commissioner. The reports must include certification that the transfer of the patient would not be contrary to the safety and welfare of the patient or other patients. The director of the special services section, or designated representative, shall then review the proposed transfer to assess its validity, and shall report the determination to the Commissioner. Transfer approval forms must be signed by the Commissioner, the Assistant Commissioner for Mental Health Services, and the Director of the Special Services Section.
- (2) When the proposed transfer has been authorized, the Commissioner shall notify the patient and family and superintendent of the receiving facility in writing. The Commissioner shall also send copies of the transfer authorization forms to the superintendent of the receiving facility, the special services section of the Department of Mental Health and Mental Retardation and to the Superintendent of the sending facility. The superintendent of the sending facility shall send to the superintendent of the receiving facility a summary of the patient's record, and, upon the patient's actual transfer, a complete copy of the patient's record.

**Authority:** T.C.A. §§ 33—1—203, 33—1—204, and 33—1—205. **Administrative History:** Original rule filed October 17, 1978; effective December 1, 1978. Amendment by Public Chapter 969; effective July 1, 1984. Amendment filed July 11, 1984; effective August 10, 1984.

#### **0940—3—3—.09 EVALUATION AND EXPERT TESTIMONY ON DEFENSE OF INSANITY.**

- (1) Mental health evaluations and expert testimony regarding the legal defense of insanity by department employees or employees of contracting agencies of the department may be provided only by persons certified as having satisfactorily participated in an educational program sponsored by the department. Such person must have participated in the assessment of the defendant and must meet the following minimum qualifications:
  - (a) A physician licensed in Tennessee with expertise in psychiatry as determined by training, education or experience; or
  - (b) A licensed psychologist with health service provider designation.

**Authority:** T.C.A. §§ 4—4—103, 33—1—203, through 33—3—205 and Chapter 7, Title 33. **Administrative History:** Original rule filed October 17, 1978; effective December 1, 1978. Repealed by Public Chapter 969; effective July 1, 1984. New rule filed July 11, 1984; effective August 10, 1984. Amendment filed November 22, 1991; effective January 6, 1992. Amendment filed September 25, 1995; effective December 9, 1995.